

By the Committee on Insurance and Representatives Byrd,  
Fasano and Waters

1                                   A bill to be entitled  
2           An act relating to title insurance; amending  
3           ss. 624.509, 626.841, 626.8411, 626.9541,  
4           627.7711, 627.777, 627.7773, 627.7776, 627.780,  
5           627.783, 627.7831, 627.784, 627.7841, 627.7842,  
6           627.7845, 627.786, 627.791, and 627.792, F.S.;  
7           revising and clarifying application of  
8           provisions relating to title insurance agents,  
9           policies, premiums, rates, contracts, charges,  
10          and practices; amending s. 627.7711, F.S.;  
11          revising definitions; amending s. 627.782,  
12          F.S.; providing a limitation on payment of  
13          portions of premiums for primary title  
14          services; creating s. 627.7825, F.S.;  
15          specifying certain alternative premium rates to  
16          be charged by title insurers for certain title  
17          insurance contracts for a certain period;  
18          providing requirements; providing limitations;  
19          providing for a new home purchase discount;  
20          excepting such rates from certain deviation  
21          provisions under certain circumstances;  
22          creating s. 627.793, F.S.; authorizing the  
23          Department of Insurance to adopt rules;  
24          providing an effective date.

25  
26           WHEREAS, the Legislature finds that regulation of  
27   insurance is in the public interest; that it promotes the  
28   public health, safety and welfare by assuring the solvency and  
29   soundness of insurers; that determination of insurability of  
30   title to real property prior to insuring such property is  
31   essential to the maintenance of the solvency and soundness of

1 title insurers; and that because title insurance agents or  
2 agencies determine insurability on behalf of title insurers,  
3 there is a direct relationship between the determination of  
4 insurability performed by title agents or agencies and the  
5 public interest, NOW, THEREFORE,

6

7 Be It Enacted by the Legislature of the State of Florida:

8

9 Section 1. Subsection (1) of section 624.509, Florida  
10 Statutes, 1998 Supplement, is amended to read:

11 624.509 Premium tax; rate and computation.--

12 (1) In addition to the license taxes provided for in  
13 this chapter, each insurer shall also annually, and on or  
14 before March 1 in each year, except as to wet marine and  
15 transportation insurance taxed under s. 624.510, pay to the  
16 Department of Revenue a tax on insurance premiums, ~~risk~~  
17 premiums for title insurance, or assessments, including  
18 membership fees and policy fees and gross deposits received  
19 from subscribers to reciprocal or interinsurance agreements,  
20 and on annuity premiums or considerations, received during the  
21 preceding calendar year, the amounts thereof to be determined  
22 as set forth in this section, to wit:

23 (a) An amount equal to 1.75 percent of the gross  
24 amount of such receipts on account of life and health  
25 insurance policies covering persons resident in this state and  
26 on account of all other types of policies and contracts  
27 (except annuity policies or contracts taxable under paragraph  
28 (b)) covering property, subjects, or risks located, resident,  
29 or to be performed in this state, omitting premiums on  
30 reinsurance accepted, and less return premiums or assessments,  
31 but without deductions:

- 1           1. For reinsurance ceded to other insurers;  
2           2. For moneys paid upon surrender of policies or  
3 certificates for cash surrender value;  
4           3. For discounts or refunds for direct or prompt  
5 payment of premiums or assessments; and  
6           4. On account of dividends of any nature or amount  
7 paid and credited or allowed to holders of insurance policies;  
8 certificates; or surety, indemnity, reciprocal, or  
9 interinsurance contracts or agreements; and  
10          (b) An amount equal to 1 percent of the gross receipts  
11 on annuity policies or contracts paid by holders thereof in  
12 this state.

13           Section 2. Section 626.841, Florida Statutes, is  
14 amended to read:

15           626.841 Definitions.--The term:

16           (1) "Title insurance agent" means a person appointed  
17 in writing by a title insurer to issue and countersign  
18 commitments or binders, ~~commitments~~, policies of title  
19 insurance, ~~or guarantees of title~~ in its behalf.

20           (2) "Title insurance agency" means an insurance agency  
21 under which title insurance agents and other employees  
22 determine insurability in accordance with underwriting rules  
23 and standards prescribed by the title insurer represented by  
24 the agency, and issue and countersign commitments ~~binders~~,  
25 ~~commitments of title insurance~~, endorsements, or policies  
26 ~~guarantees~~ of title insurance, on behalf of the appointing  
27 title insurer. The term does not include a title insurer.

28           Section 3. Paragraph (c) of subsection (2) of section  
29 626.8411, Florida Statutes, 1998 Supplement, is amended to  
30 read:

31

1           626.8411 Application of Florida Insurance Code  
2 provisions to title insurance agents or agencies.--

3           (2) The following provisions of part I do not apply to  
4 title insurance agents or title insurance agencies:

5           (c) Section 626.572 ~~626.752~~, relating to rebating,  
6 when allowed ~~exchange of business~~.

7           Section 4. Paragraph (h) of subsection (1) of section  
8 626.9541, Florida Statutes, is amended to read:

9           626.9541 Unfair methods of competition and unfair or  
10 deceptive acts or practices defined.--

11           (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR  
12 DECEPTIVE ACTS.--The following are defined as unfair methods  
13 of competition and unfair or deceptive acts or practices:

14           (h) Unlawful Rebates.--

15           1. Except as otherwise expressly provided by law, or  
16 in an applicable filing with the department, knowingly:

17           a. Permitting, or offering to make, or making, any  
18 contract or agreement as to such contract other than as  
19 plainly expressed in the insurance contract issued thereon;

20           b. Paying, allowing, or giving, or offering to pay,  
21 allow, or give, directly or indirectly, as inducement to such  
22 insurance contract, any unlawful rebate of premiums payable on  
23 the contract, any special favor or advantage in the dividends  
24 or other benefits thereon, or any valuable consideration or  
25 inducement whatever not specified in the contract;

26           c. Giving, selling, or purchasing, or offering to  
27 give, sell, or purchase, as inducement to such insurance  
28 contract or in connection therewith, any stocks, bonds, or  
29 other securities of any insurance company or other  
30 corporation, association, or partnership, or any dividends or  
31

1 profits accrued thereon, or anything of value whatsoever not  
2 specified in the insurance contract.

3 2. Nothing in paragraph (g) or subparagraph 1. of this  
4 paragraph shall be construed as including within the  
5 definition of discrimination or unlawful rebates:

6 a. In the case of any contract of life insurance or  
7 life annuity, paying bonuses to all policyholders or otherwise  
8 abating their premiums in whole or in part out of surplus  
9 accumulated from nonparticipating insurance; provided that any  
10 such bonuses or abatement of premiums is fair and equitable to  
11 all policyholders and for the best interests of the company  
12 and its policyholders.

13 b. In the case of life insurance policies issued on  
14 the industrial debit plan, making allowance to policyholders  
15 who have continuously for a specified period made premium  
16 payments directly to an office of the insurer in an amount  
17 which fairly represents the saving in collection expenses.

18 c. Readjustment of the rate of premium for a group  
19 insurance policy based on the loss or expense thereunder, at  
20 the end of the first or any subsequent policy year of  
21 insurance thereunder, which may be made retroactive only for  
22 such policy year.

23 d. Issuance of life insurance policies or annuity  
24 contracts at rates less than the usual rates of premiums for  
25 such policies or contracts, as group insurance or employee  
26 insurance as defined in this code.

27 e. Issuing life or disability insurance policies on a  
28 salary savings, bank draft, preauthorized check, payroll  
29 deduction, or other similar plan at a reduced rate reasonably  
30 related to the savings made by the use of such plan.

31

1           3.a. No title insurer, or any member, employee,  
2 attorney, agent, agency, or solicitor thereof, shall pay,  
3 allow, or give, or offer to pay, allow, or give, directly or  
4 indirectly, as inducement to title insurance, or after such  
5 insurance has been effected, any ~~unlawful~~ rebate or abatement  
6 of the agent's, agency's, or title insurer's share of the  
7 premium or any charge for related title services below the  
8 cost for providing such services, or provide charge made  
9 ~~incident to the issuance of such insurance, any special favor~~  
10 or advantage, or any monetary consideration or inducement  
11 whatever. ~~The words "charge made incident to the issuance of~~  
12 ~~such insurance" shall be construed to encompass underwriting~~  
13 ~~premium, agent's commission, abstracting charges, title~~  
14 ~~examination fee, and closing charges; however, Nothing herein~~  
15 contained shall preclude an abatement in an attorney's fee  
16 charged for legal services ~~rendered incident to the issuance~~  
17 ~~of such insurance.~~

18           b. Nothing in this subparagraph shall be construed as  
19 prohibiting the payment of fees to attorneys at law duly  
20 licensed to practice law in the courts of this state, for  
21 professional services ~~in the actual examination of title to~~  
22 ~~real property as a condition to the issuance of title~~  
23 ~~insurance, or as prohibiting the payment of earned portions of~~  
24 ~~the premium commissions to duly appointed agents or agencies~~  
25 ~~who actually perform services for the title insurer ~~issue the~~~~  
26 ~~policy of title insurance for the underwriting company.~~

27           c. No insured named in a policy, or any other person  
28 directly or indirectly connected with the transaction  
29 involving the issuance of such policy, including, but not  
30 limited to, any mortgage broker, real estate broker, builder,  
31 or attorney, any employee, agent, agency, representative, or

1 solicitor thereof, or any other person whatsoever, shall  
2 knowingly receive or accept, directly or indirectly, any  
3 ~~unlawful~~ rebate or abatement of said charge, or any monetary  
4 consideration or inducement, other than as set forth in  
5 sub-subparagraph b.

6 Section 5. Subsections (1) and (2) of section  
7 627.7711, Florida Statutes, are amended to read:

8 627.7711 Definitions.--As used in this part, the term:

9 (1)(a) "Related title services" means services  
10 performed by a title insurer or title insurance agent or  
11 agency, in the agent's or agency's capacity as such,  
12 including, but not limited to, preparing or obtaining a title  
13 search, examining title information, preparing documents  
14 necessary to close the transaction, conducting the closing, or  
15 handling the disbursing of funds related to the closing in a  
16 real estate closing transaction in which a title insurance  
17 ~~binder, commitment, or~~ policy is to be issued. The ~~risk~~  
18 premium, together with the charge for related title services,  
19 constitutes the regular title insurance premium.

20 (b) "Primary title services" means determining  
21 insurability in accordance with sound underwriting practices  
22 based upon evaluation of a reasonable search and examination  
23 of the title, determination and clearance of underwriting  
24 objections and requirements to eliminate risk, preparation and  
25 issuance of a title insurance commitment setting forth the  
26 requirements to insure, and preparation and issuance of the  
27 policy.

28 (2) "~~Risk~~ Premium" means the charge, as specified by  
29 rule of the department, that is made by a title insurer for a  
30 title insurance policy, including the charge for performance  
31 of primary title services by a title insurer or title

1 insurance agent or agency, and incurring the risks incident to  
2 such policy ~~the assumption of the risk~~, under the several  
3 classifications of title insurance contracts and forms, and  
4 upon which charge a premium tax is paid under s. 624.509. As  
5 used in this part or in any other law, with respect to title  
6 insurance, the word ~~words~~ "premium" does ~~or "risk premium"~~  
7 ~~mean only the risk premium as defined in this section and do~~  
8 ~~not include~~ a commission ~~any other charge incidental to title~~  
9 ~~insurance.~~

10 Section 6. Section 627.777, Florida Statutes, is  
11 amended to read:

12 627.777 Approval of forms.--A title insurer may not  
13 issue or agree to issue any form of ~~title insurance binder,~~  
14 title insurance commitment, ~~preliminary report,~~ title  
15 insurance policy, other contract of title insurance, or  
16 related form until it is filed with and approved by the  
17 department. The department may not disapprove a title  
18 guarantee or policy form on the ground that it has on it a  
19 blank form for an attorney's opinion on the title.

20 Section 7. Section 627.7773, Florida Statutes, is  
21 amended to read:

22 627.7773 Accounting and auditing of forms by title  
23 insurers.--

24 (1) Each title insurer authorized to do business in  
25 this state shall, at least once during each calendar year,  
26 require of each of its title insurance agents or agencies  
27 accountings of all outstanding forms in the agent's or  
28 agency's possession of the types that are specified in s.  
29 627.777.

30 (2) If the department has reason to believe that an  
31 audit of outstanding forms should be required of any title



1 insurer as to a title insurance agent or agency, the  
2 department may require the title insurer to make a special  
3 audit of the forms. The title insurer shall complete the  
4 audit not later than 60 days after the request is received  
5 from the department, and shall report the results of the  
6 special audit to the department no later than 90 days after  
7 the request is received.

8 Section 8. Section 627.7776, Florida Statutes, is  
9 amended to read:

10 627.7776 Furnishing of supplies; civil liability.--

11 (1) A title insurer may not furnish to any person any  
12 blank forms, applications, stationery, or other supplies to be  
13 used in soliciting, negotiating, or effecting contracts of  
14 title insurance on its behalf until that person has received  
15 from the insurer a contract to act as a title insurance agent  
16 or agency and has been licensed by the department, if required  
17 by s. 626.8417.

18 (2) A title insurer or title insurance agent or agency  
19 that furnishes any supplies to a person not authorized by the  
20 title insurer as provided in subsection (1) is subject to  
21 civil liability to any insured of the title insurer to the  
22 same extent and in the same manner as if the person had been  
23 appointed or authorized by the title insurer to act in its  
24 behalf.

25 Section 9. Section 627.780, Florida Statutes, is  
26 amended to read:

27 627.780 Illegal dealings in risk premium.--

28 (1) A person may not knowingly quote, charge, accept,  
29 collect, or receive a ~~risk~~ premium for title insurance other  
30 than the ~~risk~~ premium adopted by the department.

31

1           (2) A title insurer may not knowingly accept, collect,  
2 or receive any sum as ~~risk~~ premium for title insurance, if the  
3 title insurance is not then provided or is not to be provided,  
4 subject to acceptance of the risk, in due course, unless the  
5 title insurer promptly enters the sum on its books of account  
6 as premium collected in advance.

7           Section 10. Section 627.782, Florida Statutes, is  
8 amended to read:

9           627.782 Adoption of rates.--

10           (1) Subject to the rating provisions of this code, the  
11 department must adopt a rule specifying the ~~risk~~ premium to be  
12 charged in this state by title insurers for the respective  
13 types of title insurance contracts and, for policies issued  
14 through agents or agencies, the percentage of such premium  
15 required to be retained by the title insurer which shall ~~and~~  
16 ~~services incident thereto. The department may, by rule,~~  
17 ~~establish limitations on such reasonable charges made in~~  
18 ~~addition to the risk premium based upon the expenses~~  
19 ~~associated with the services rendered and other relevant~~  
20 ~~factors. The department must also adopt rules incident to the~~  
21 ~~applicability of the risk premium, including the percentage or~~  
22 ~~amount of the risk premium required to be maintained by the~~  
23 ~~title insurer, and related rules to ensure that the amounts~~  
24 ~~required to be maintained by the insurer are not be less than~~  
25 ~~30 percent of the risk premium for policies sold by agents.~~  
26 However, in a transaction subject to the Real Estate  
27 Settlement Procedures Act of 1974, 12 U.S.C. 2601 et seq., as  
28 amended, no portion of the premium attributable to providing a  
29 primary title service shall be paid to or retained by any  
30 person who does not actually perform or is not liable for the  
31 performance of such service. The department may, by rule,

1 establish limitations on related title services charges made  
2 in addition to the premium based upon the expenses associated  
3 with the services rendered and other relevant factors.

4 (2) In adopting premium rates, the department must  
5 give due consideration to the following:

6 (a) The title insurers' loss experience and  
7 prospective loss experience under ~~insured~~ closing protection  
8 ~~service~~ letters, ~~search and examination services~~, and policy  
9 liabilities.

10 (b) A reasonable margin for underwriting profit and  
11 contingencies, including contingent liability under s.  
12 627.7865, sufficient to allow title insurers, ~~and~~ agents, and  
13 agencies to earn a rate of return on their capital that will  
14 attract and retain adequate capital investment in the title  
15 insurance business and maintain an efficient title insurance  
16 delivery system.

17 (c) Past expenses and prospective expenses for  
18 administration and handling of risks.

19 (d) Liability for defalcation.

20 (e) Other relevant factors.

21 (3) Rates may be grouped by classification or schedule  
22 and may differ as to class of risk assumed.

23 (4) Rates may not be excessive, inadequate, or  
24 unfairly discriminatory.

25 (5) The ~~risk~~ premium applies to each \$100 of insurance  
26 issued to an insured.

27 (6) The ~~risk~~ premium rates apply throughout this  
28 state.

29 (7) The department shall, in accordance with the  
30 standards provided in subsection (2), review the ~~risk~~ premium  
31 ~~and the related title services rate~~ as needed, but not less

1 frequently than once every 3 years, and shall, based upon the  
2 review required by this subsection, revise the ~~risk~~ premium  
3 ~~and the related title services rate~~ if the results of the  
4 review so warrant.

5 (8) The department may, by rule, require licensees  
6 under this part to annually submit statistical information,  
7 including loss and expense data, as the department determines  
8 to be necessary to analyze ~~risk~~ premium ~~and related title~~  
9 ~~services~~ rates, retention rates, and the condition of the  
10 title insurance industry.

11 Section 11. Section 627.7825, Florida Statutes, is  
12 created to read:

13 627.7825 Alternative rate adoption.--Notwithstanding  
14 s. 627.782(1) and (7), the premium rates to be charged by  
15 title insurers in this state from July 1, 1999, through June  
16 30, 2002, for title insurance contracts shall be as set forth  
17 in this section. The rules related to premium rates for title  
18 insurance, including endorsements, adopted by the department  
19 and in effect on April 1, 1999, that do not conflict with the  
20 provisions of this section shall remain in effect until June  
21 30, 2002. The department shall not grant a rate deviation  
22 pursuant to s. 627.783 for the premium rates established in  
23 this section and in department rules in effect on April 1,  
24 1999, that do not conflict with this section.

25 (1) ORIGINAL TITLE INSURANCE RATES.--

26 (a) For owner and leasehold title insurance:

27 1. The premium for the original owner's or for  
28 leasehold insurance shall be:

	<u>Per</u>	<u>Minimum</u>
	<u>Thousand</u>	<u>Insurer</u>
		<u>Retention</u>
1		
2		
3		
4	<u>From \$0 to \$100,000 of liability written</u>	<u>\$5.75</u> <u>30%</u>
5	<u>From \$100,000 to \$1 million, add</u>	<u>\$5.00</u> <u>30%</u>
6	<u>Over \$1 million and up to \$5 million, add</u>	<u>\$2.50</u> <u>35%</u>
7	<u>Over \$5 million and up to \$10 million, add</u>	<u>\$2.25</u> <u>40%</u>
8	<u>Over \$10 million, add</u>	<u>\$2.00</u> <u>40%</u>
9		
10	<u>The minimum premium for all conveyances except multiple</u>	
11	<u>conveyances shall be \$100. The minimum premium for multiple</u>	
12	<u>conveyances on the same property shall be \$60.</u>	
13	<u>2. In all cases, the owner's policy shall be issued</u>	
14	<u>for the full insurable value of the premises.</u>	
15	<u>(b) For mortgage title insurance:</u>	
16	<u>1. The premium for the original mortgage title</u>	
17	<u>insurance shall be:</u>	
18		
19	<u>Per</u>	<u>Minimum</u>
20	<u>Thousand</u>	<u>Insurer</u>
21		<u>Retention</u>
22	<u>From \$0 to \$100,000 of liability written</u>	<u>\$5.75</u> <u>30%</u>
23	<u>From \$100,000 to \$1 million, add</u>	<u>\$5.00</u> <u>30%</u>
24	<u>Over \$1 million and up to \$5 million, add</u>	<u>\$2.50</u> <u>35%</u>
25	<u>Over \$5 million and up to \$10 million, add</u>	<u>\$2.25</u> <u>40%</u>
26	<u>Over \$10 million, add</u>	<u>\$2.00</u> <u>40%</u>
27		
28	<u>The minimum premium for all conveyances except multiple</u>	
29	<u>conveyances shall be \$100. The minimum premium for multiple</u>	
30	<u>conveyances on the same property shall be \$60.</u>	
31		

1           2. A mortgage title insurance policy shall be issued  
2 for an amount less than the full principal debt. A policy may,  
3 however, be issued for an amount up to 25 percent in excess of  
4 the principal debt to cover interest and foreclosure costs.

5           (2) REISSUE RATES.--

6           (a) The reissue premium charge for owner's, mortgage,  
7 and leasehold title insurance policies shall be:

	<u>Per Thousand</u>
10 <u>Up to \$100,000 of liability written</u>	<u>\$3.30</u>
11 <u>Over \$100,000 and up to \$1 million, add</u>	<u>\$3.00</u>
12 <u>Over \$1 million and up to \$10 million, add</u>	<u>\$2.00</u>
13 <u>Over \$10 million, add</u>	<u>\$1.50</u>

14  
15 The minimum premium shall be \$100.

16           (b) Provided a previous owner's policy was issued  
17 insuring the seller or the mortgagor in the current  
18 transaction and that both the reissuing agent and the  
19 reissuing underwriter retain for their respective files copies  
20 of the prior owner's policy or policies, the reissue premium  
21 rates in paragraph (a) shall apply to:

22           1. Policies on real property which is unimproved  
23 except for roads, bridges, drainage facilities, and utilities  
24 if the current owner's title has been insured prior to the  
25 application for a new policy;

26           2. Policies issued with an effective date of less than  
27 3 years after the effective date of the policy insuring the  
28 seller or mortgagor in the current transaction; or

29           3. Mortgage policies issued on refinancing of property  
30 insured by an original owner's policy which insured the title  
31 of the current mortgagor.

1       (c) Any amount of new insurance, in the aggregate, in  
2 excess of the amount under the previous policy shall be  
3 computed at the original owner's or leasehold rates, as  
4 provided in subsection (1).

5       (3) NEW HOME PURCHASE DISCOUNT.--Provided the seller  
6 has not leased or occupied the premises, the original premium  
7 for a policy on the first sale of residential property with a  
8 one to four family improvement that is granted a certificate  
9 of occupancy shall be discounted by the amount of premium paid  
10 for any prior loan policy insuring the lien of a mortgage  
11 executed by the seller on the premises. In the case of a prior  
12 loan policy insuring the lien of a mortgage on multiple units  
13 or parcels, the discount shall be prorated by dividing the  
14 amount of the premium paid for the prior loan policy by the  
15 total number of units or parcels without regard to varying  
16 unit or parcel value. The minimum new home purchase premium  
17 shall be \$200. The new home purchase discount may not be  
18 combined with any other reduction from original premium rates  
19 provided for in this section. The insurer shall reserve for  
20 unearned premiums only on the excess amount of the policy over  
21 the amount of the actual or prorated amount of the prior loan  
22 policy.

23       (4) SUBSTITUTION LOANS RATES.--

24       (a) When the same borrower and the same lender make a  
25 substitution loan on the same property, the title to which was  
26 insured by an insurer in connection with the previous loan,  
27 the following premium rates for substitution loans shall  
28 apply:

<u>Age of Previous Loan</u>	<u>Premium Rates</u>
<u>3 years or under</u>	<u>30 percent of the original rates</u>

1	<u>From 3 to 4 years</u>	<u>40 percent of the original rates</u>
2	<u>From 4 to 5 years</u>	<u>50 percent of the original rates</u>
3	<u>From 5 to 10 years</u>	<u>60 percent of the original rates</u>
4	<u>Over 10 years</u>	<u>100 percent of original rates</u>

5  
6 The minimum premium for substitution loan rates shall be \$100.

7 (b) At the time a substitution loan is made, the  
8 unpaid principal balance of the previous loan will be  
9 considered the amount of insurance in force on which the  
10 foregoing premium rates shall be calculated. To these rates  
11 shall be added the original rates in the applicable schedules  
12 for any new insurance, including any difference between the  
13 unpaid principal balance of the previous loan and the amount  
14 of the new loan.

15 (c) In the case of a substitution loan of \$250,000 or  
16 more, when the same borrower and any lender make a  
17 substitution loan on the same property, the title to which was  
18 insured by an insurer in connection with the previous loan,  
19 the premium for such substitution loans shall be the rates as  
20 set forth in paragraphs (a) and (b).

21 Section 12. Section 627.783, Florida Statutes, is  
22 amended to read:

23 627.783 Rate deviation.--

24 (1) A title insurer may petition the department for an  
25 order authorizing a specific deviation from the adopted ~~risk~~  
26 premium, and a title insurer or title insurance agent may  
27 petition the department for an order authorizing and  
28 permitting a specific deviation above the reasonable charge  
29 for related title ~~other~~ services rendered specified in s.  
30 627.782(1). The petition shall be in writing and sworn to and  
31 shall set forth allegations of fact upon which the petitioner



1 will rely, including the petitioner's reasons for requesting  
2 the deviation. Any authorized title insurer, ~~or agent, or~~  
3 agency may join in the petition for like authority to deviate  
4 or may file a separate petition praying for like authority or  
5 opposing the deviation. The department shall rule on all such  
6 petitions simultaneously.

7 (2) If, in the judgment of the department, the  
8 requested deviation is not justified, the department may enter  
9 an order denying the petition. An order granting a petition  
10 constitutes an amendment to the adopted ~~risk~~ premium as to the  
11 petitioners named in the order, and is subject to s. 627.782.

12 Section 13. Section 627.7831, Florida Statutes, is  
13 amended to read:

14 627.7831 ~~Title binders and~~ Commitments; charges;  
15 collection.--

16 (1) When a title insurance ~~binder or a~~ commitment to  
17 insure a title or risk is issued at the request of the insured  
18 or the insured's representative, ~~or agent, or agency~~, a  
19 portion of the ~~risk~~ premium must be charged for the ~~binder or~~  
20 commitment when issued. The portion of the ~~risk~~ premium  
21 charged for the ~~binder or~~ commitment must be credited to the  
22 ~~risk~~ premium due upon issuance of the title insurance policy.

23 (2) The amount charged under subsection (1) must be  
24 collected no later than the date of the closing or 12 months  
25 after the date of the commitment ~~or binder~~, whichever occurs  
26 earlier, or another date agreed to in writing at the time of  
27 issuance of the ~~binder or~~ commitment.

28 (3) This section does not apply to a transaction  
29 involving a residential property.

30 Section 14. Section 627.784, Florida Statutes, is  
31 amended to read:

1           627.784 Casualty title insurance prohibited.--A title  
2 insurance policy or guarantee of title may not be issued  
3 without regard ~~with disregard~~ to the possible existence of  
4 adverse matters or defects of title.

5           Section 15. Section 627.7841, Florida Statutes, is  
6 amended to read:

7           627.7841 Insurance against adverse matters or defects  
8 in the title.--If a title insurer issuing a ~~binder~~, commitment  
9 or policy of title insurance, ~~or guarantee of title~~ upon an  
10 estate, lien, or interest in property located in this state  
11 through its officers, employees, ~~or agents~~, or agencies  
12 disburses settlement or closing funds, the title insurer shall  
13 insure against the possible existence of adverse matters or  
14 defects in the title which are recorded during the period of  
15 time between the effective date of the ~~binder or~~ commitment  
16 and the date of recording of the document creating the estate  
17 or interest to be insured, except as to matters of which the  
18 insured has knowledge.

19           Section 16. Subsection (2) of section 627.7842,  
20 Florida Statutes, is amended to read:

21           627.7842 Policy exceptions.--

22           (2) The title insurer, ~~or agent~~, or agency issuing the  
23 title policy may except from coverage the items specified in  
24 subsection (1) if the title insurer, ~~or agent~~, or agency has  
25 knowledge of facts requiring the exceptions, notwithstanding  
26 the survey or affidavits, if the insurer, ~~or agent~~, or agency  
27 discloses such facts to the proposed insured.

28           Section 17. Section 627.7845, Florida Statutes, is  
29 amended to read:

30           627.7845 Determination of insurability required;  
31 preservation of evidence of title search and examination.--

1           (1) A title insurer may not issue a title insurance  
2 ~~binder, commitment, endorsement, or title insurance policy, or~~  
3 ~~guarantee of title~~ until the title insurer has caused to be  
4 conducted a reasonable search and examination of the title and  
5 of such other information as may be necessary, and has caused  
6 to be made a determination of insurability of title, including  
7 endorsement coverages, in accordance with sound underwriting  
8 practices.

9           (2) The title insurer shall cause the evidence of the  
10 reasonable search and examination of the title to be preserved  
11 and retained in its files or in the files of its title  
12 insurance agent or agency for a period of not less than 7  
13 years after the title insurance ~~binder, commitment, title~~  
14 insurance policy, or guarantee of title was issued. The title  
15 insurer or agent or agency must produce the evidence required  
16 to be maintained by this subsection at its offices upon the  
17 demand of the department. Instead of retaining the original  
18 evidence, the title insurer or the title insurance agent or  
19 agency may, in the regular course of business, establish a  
20 system under which all or part of the evidence is recorded,  
21 copied, or reproduced by any photographic, photostatic,  
22 microfilm, microcard, miniature photographic, or other process  
23 which accurately reproduces or forms a durable medium for  
24 reproducing the original.

25           (3) The title insurer or its agent or agency must  
26 maintain a record of the actual risk premium and related title  
27 service charges made for issuance of the policy and any  
28 endorsements in its files for a period of not less than 7  
29 years. The title insurer, ~~or agent, or agency~~ must produce  
30 the record at its office upon demand of the department.

31

1           (4) This section does not apply to an insurer assuming  
2 no primary liability in a contract of reinsurance or to an  
3 insurer acting as a coinsurer if any other coinsuring insurer  
4 has complied with this section.

5           Section 18. Subsection (3) of section 627.786, Florida  
6 Statutes, is amended to read:

7           627.786 Transaction of title insurance and any other  
8 kind of insurance prohibited.--

9           (3) Subsection (1) does not preclude a title insurer  
10 from providing instruments to any prospective insured, in the  
11 form and content approved by the department, under which the  
12 title insurer assumes liability for loss due to the fraud of,  
13 dishonesty of, misappropriation of funds by, or failure to  
14 comply with written closing instructions by, its contract  
15 agents, agencies, or approved attorneys in connection with a  
16 real property transaction for which the title insurer is to  
17 issue a title insurance policy ~~or guarantee of title~~.

18           Section 19. Section 627.791, Florida Statutes, is  
19 amended to read:

20           627.791 Penalties against title insurers for  
21 violations by persons or entities not licensed.--A title  
22 insurer is subject to the penalties in ss. 624.418(2) and  
23 624.4211 for any violation of a lawful order or rule of the  
24 department, or for any violation of this code, committed by:

25           (1) A person, firm, association, corporation,  
26 cooperative, joint-stock company, or other legal entity not  
27 licensed under this part when issuing and countersigning  
28 ~~binders, commitments~~ or policies of title insurance, ~~or~~  
29 ~~guarantees of title~~ on behalf of the title insurer.

30  
31

1           (2) An attorney when issuing and countersigning  
2 ~~binders, commitments or, policies of title insurance, or~~  
3 ~~guarantees of title~~ on behalf of the title insurer.

4           Section 20. Section 627.792, Florida Statutes, is  
5 amended to read:

6           627.792 Liability of title insurers for defalcation by  
7 title insurance agents or agencies.--A title insurer is liable  
8 for the defalcation, conversion, or misappropriation by a  
9 licensed title insurance agent or agency of funds held in  
10 trust by the agent or agency pursuant to s. 626.8473. If the  
11 agent or agency is an agent or agency for licensed by two or  
12 more title insurers, any liability shall be borne by the title  
13 insurer upon which a title insurance binder, commitment or,  
14 policy, or title guarantee was issued prior to the illegal  
15 act. If no ~~binder, commitment or, policy, or guarantee~~ was  
16 issued, each title insurer represented by the agent or agency  
17 at the time of the illegal act shares in the liability in the  
18 same proportion that the premium remitted to it by the agent  
19 or agency during the 1-year period before the illegal act  
20 bears to the total premium remitted to all title insurers by  
21 the agent or agency during the same time period.

22           Section 21. Section 627.793, Florida Statutes, is  
23 created to read:

24           627.793 Rulemaking authority.--The department is  
25 authorized to adopt rules implementing the provisions of this  
26 part.

27           Section 22. This act shall take effect July 1, 1999.